

REMARKS

Claim 1-20 remain in the application. The claims have been amended to address all of the new objections raised in the final office action, as well as the new rejections of claims 1, 6 and 10 under Section 112. It is submitted that several of the bases now presented for rejections under Section 112 are unsupportable and should be withdrawn. For example, any inability to construe the term "data telegrams" as used in the claims is without basis. Further, the use of the term is fully explained at page 1 of the patent application, leaving no ambiguity as to the subject matter referred to in claims 1, 6 and 10.

Applicants acknowledge that the application is based on a translation from a foreign document, but remind the Examiner that the purpose of Section 112 is to assure the claims are definite and do not lack clarity. On the other hand, numerous objections and rejections under Section 112 presented in the final office action are not supportable under any argument that they render claims indefinite or result in a lack of clarity. Accordingly, applicants have amended the claims within reason to address what appear to be discretionary preferences of the Examiner. Although many of these amendments are not necessary, Applicants believe that the amendments should be entered under 37 CFR 1.116 because they are all responsive to the Examiner's demands and certainly do not raise any new issues.

The final office action repeats the same art rejection presented in the prior office action, but clarifies that the Examiner withdrew the application from appeal because the Shaffer reference does not disclose "multiple data telegrams sent in a phase" [see page 3 of the office action] and the Lee reference is relied upon for teaching that multiple packets may be sent in a single phase. Notwithstanding the Examiner's reasoning for withdrawing the application from the previous appeal, the Examiner still has not addressed all of the deficiencies in the Shaffer reference. Specifically, Applicants again respectfully disagree with the Examiner's application of the Shaffer reference, as it has been urged multiple times that none of the Examiner's citations from the Shaffer reference relate to defining a phase in a transmission cycle based on a receive time of the end of a telegram or data packet. Thus, all of the independent claims appear to be

again rejected by incorrectly relying upon Shaffer, as fully addressed in the appeal brief and as noted in the prior response to the non-final office action issued after the application was withdrawn from appeal. That is, the primary reference (Shaffer) is deficient for the very same reasons argued in the appeal brief and the Lee reference does not at all compensate for such. The final office action fails to address this deficiency. Understanding that the Examiner refuses to remove the rejections based on Shaffer, it is nonetheless incumbent upon the Examiner to only sustain a rejection when there is sufficient basis for doing so. There is a clear deficiency in the Shaffer reference which is not addressed, i.e., the failure to define a phase in a transmission cycle based on a receive time of the end of a telegram or data packet.

Procedurally, the Examiner may continue refuse to comply and once more force the applicants to appeal the rejections. As previously urged, Applicants have already invested heavily in an appeal which the Examiner has withdrawn, only to again apply the same defective argument based on Shaffer. The deficiencies should not be side-stepped by merely presenting what is technically a new rejection but wherein the Lee reference does not compensate for all of the clearly identified deficiencies in the Shaffer reference.

Conclusion

While applicants continue to disagree with the new rejections presented under Section 112, the claims have been amended in order to place the application into condition for allowance or alternatively to place the claims into better form for consideration upon appeal. The Examiner is requested to fully respond to the deficiencies of the art rejections as noted herein.

Based on the above amendments and the argument presented, the application should be allowed. If the Examiner refuses allowance, then the Examiner is requested to issue an Advisory Action containing a complete response to the Applicants' argued deficiencies of the rejection so that Applicants have a full understanding of the Examiner's position prior to preparing another appeal brief.

Serial No. 10/789,069
Atty. Doc. No. 2003P00335US

The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

Dated: March 25, 2009

By: Janet D. Hood
Janet D. Hood
Registration No. 61,142
(407) 736-4234

Siemens Corporation
Intellectual Property Department
170 Wood Avenue South
Iselin, New Jersey 08830